

REMARKS

I. The Election Requirement and Applicant's Provisional Election

Applicants hereby provisionally elect Group 1, Claims 1-26, 32, 33 in part, 34, 35, 37-40, and 41 in part drawn to an antibody, a method of making the antibody, and a method of treatment by administering the antibody for examination, with traverse.

The Examiner required election and considers the application to be directed to more than one species of the generic invention which are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1. The Examiner has required Applicants to elect a single antibody species for examination either by identifying 6 CDR sequences or a heavy chain sequence and a light chain sequence.

In response, Applicants hereby provisionally elect the following CDRs: SEQ ID NOs: 88, 92, 96 (all for VH5) and SEQ ID NOs: 100, 102, and 104 (all for VL2).

II. Reasons for Traversal

The Examiner has required restriction between claims 1-26, 32, 33 in part, 34, 35, 37-40, and 41 in part (Group I), drawn to an antibody, a method of making the antibody, and a method of treatment by administering the antibody, and claims 27-31, 33 in part, 34, 35, and 41 in part, drawn to a nucleic acid, vector and host cell. Examiner does not believe that there is a single general inventive concept under PCT Rule 13.1. Applicant respectfully disagrees.

The Commissioner may require restriction if two or more independent and distinct inventions are claimed in one application (35 U.S.C. § 121). In the present case, although the claimed subject matter may be classified in different classes, the inventions are not independent.

Specifically, the claims that are encompassed by Group II are simply the nucleic acid sequences encoding a CD3 specific binding construct of claim 1 (Group I). As such, there would be no undue burden for examination of both groups.

III. Conclusions

Applicants note that upon allowance of the generic claims, any claims to non-elected species should no longer be considered withdrawn. C.f. MPEP § 809. Additionally, Applicants reserve the right to file a divisional application covering the subject matter of the non-elected claims. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

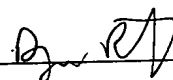
The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extension fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date November 20, 2009

FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-4620
Facsimile: (202) 672-5399

By



Benjamin A. Berkowitz
Attorney for Applicants
Registration No. 59,349